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HAMILTON, BROOK, SMITH & REYNOLDS, P.C.
530 VIRGINIA ROAD
P.O. BOX 9133
CONCORD MA 01742-9133

In re Application of :
Sean McCarthy :
Serial No.: 09/009,802 : PETITION DECISION
Filed: January 20, 1998 :
Attorney Docket No.: 1855.2067-000 :

This is in response to the petition under 37 CFR 1.181, filed December 30, 2004, requesting clarification of the application record.

Applicant requests clarification of the record with respect to the submission of a sequence disk. Applicant states that the application was filed without a CRF disk, an executed declaration or fee. In response to a Missing Parts Notice which indicated only the fee and declaration were missing applicant submitted a proper Sequence listing disk with the fee and declaration. Subsequently the examiner mailed a restriction requirement to applicant, setting a one month extendable time period for reply, and included therewith a sequence error listing report and a requirement that a new sequence disk be supplied. A time period of one month for submission of the CRF was set and indicated as non-extendable. Applicant replied to the restriction requirement within the third month including a request and fee for a two month extension of time and a new sequence listing and CRF disk. This new CRF disk was found acceptable.

Applicant seeks retroactively waiver of the non-extendable one month time period for submission of the CRF disk set in the Office action. A review of the Office action shows that two differing time periods were set. At the time of mailing of the error report to applicant applications were forwarded to the examining corps prior to completion of requirements for an acceptable CRF disk. It appears that the examiner inadvertently utilized an old or incorrect version of a form paragraph for requiring submission of an acceptable CRF disk. In view thereof the waiver is granted. In view of the continued prosecution of the application following acceptance of the CRF disk in response to the restriction requirement the waiver was effectively granted *sub silentio*.

The petition is **GRANTED**

Should there be any questions about this decision please contact William R. Dixon, Jr., by letter addressed to Director, TC 1600, at the address listed above, or by telephone at 571-272-0519 or by facsimile sent to the general Office facsimile number 571-273-8300.

Jasemine C. Chambers

Jasemine C. Chambers
Director, Technology Center 1600